

CERTIFIED TRANSLATION

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COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
COURT OF FIRST INSTANCE
SUPERIOR CHAMBER OF SAN JUAN

ELECTRIC POWER AUTHORITY OF
 PUERTO RICO
Plaintiff Party

v.

LIBERTY MUTUAL INSURANCE COMPANY
Respondent Party

CASE NO. SJ2020CV03378

RE: COLLECTION - ORDINARY

SUMMON

UNITED STATES OF AMERICA, SS
 PRESIDENT OF THE UNITED STATES
 COMMONWEALTH OF PUERTO RICO

TO: LIBERTY MUTUAL INSURANCE COMPANY
 304 PONCE DE LEÓN AVE. SUITE 903 SAN JUAN, PUERTO RICO 00918

YOU ARE HEREBY ordered to file a responsive allegation in court within 30 days of this summon having been served, excluding the day of service. You must file your responsive allegation through the Unified System for the Management and Administration of Cases (SUMAC, for its initials in Spanish), which can be accessed using the following electronic address: <https://unired.ramajudicial.pr>, unless you are being represented pro se, in which case you must file your responsive allegation at the Court Clerk's office. If you should fail to file your responsive allegation within the prescribed terms, the court could find you in contempt of court and grant the remedies requested in the claim, or any other, if the court, at its discretion, believes it to be appropriate.

Name of Attorney: EDUARDO J CORRETJER REYES

RUA: 15985

Address: 625 PONCE DE LEON AVE, SAN JUAN, PUERTO RICO, 00917-4819

Tel: 7877514618 / Fax: 7877596503

E-mail: ejcr@corretjerlaw.com

Issued under my signature and seal of the Court, on _____ of _____ of _____.

SEAL: COMMONWEALTH OF PUERTO RICO
 COURT OF FIRST INSTANCE
 SUPERIOR CHAMBER OF SAN JUAN
 GENERAL COURT OF JUSTICE – K027
 OAT 1721 Summons (SUMAC)
 (Rev. May 2018)
 Rules of Civil Procedure 2009, as amended

Griselda Rodríguez Collado

Regional Clerk

Name of the Regional Clerk

María Ocasio Rodríguez

Name [Illegible]

Auxiliary Court Clerk

I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.

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Case No. **SJ2020CV03378**

CERTIFICATE OF SERVICE BY THE BAILIFF

I, _____, Bailiff for the Court of First Instance of Puerto Rico, Chamber of _____. CERTIFY that the service of the summon and claim in the above-captioned case was conducted by me, on ____ of _____ of _____, at _____ am pm, in the following manner:

By personal delivery to the respondent party at the following physical address:

Accesible in the immediate vicinity of the respondent party at the following physical address:

By leaving copy of the documents to an agent authorized by the respondent party or that has been designated by law to receive summons at the following physical address:

Could not serve the summon personally because: _____

In _____, Puerto Rico, on ____ of _____ of _____.

Name of Regional Bailiff _____ Name of First Instance Bailiff and Badge Number _____

Signature of First Instance Bailiff _____

SERVICE OF THE SUMMON BY A PARTICULAR PERSON

I, _____, attest that, in accordance with Rule 4.3 of the Civil Procedure of Puerto Rico, I have the legal authority and certify that the service of the summon and the above-captioned case was performed by me, on ____ of _____ of _____, in the following manner:

By personal delivery to the respondent party at the following physical address:

Accesible in the immediate vicinity of the respondent party at the following physical address:

By leaving copy of the documents to an agent authorized by the respondent party or that has been authorized by law to receive summons at the following physical address:

Could not serve the summon personally because: _____

SUMMON COSTS

\$ _____

DECLARATION OF THE SERVICE AGENT

I declare, under penalty of perjury, in accordance with the laws of the Commonwealth of Puerto Rico that the information provided in the serving of the summon is true and correct.

IN RECOGNITION THEREOF, I sign this document in _____, Puerto Rico, on ____ of _____ of _____.

Signature of Server
AFFIDAVIT No. _____

Address of the Server
[in case it is sworn before a notary]

Sworn and signed before me by _____, of the personal circumstances mentioned above, who I attest to knowing

(personal knowledge or, in its absence, the accreditation of the supplementary medium provided by Notarial Law)

In _____, Puerto Rico, on ____ of _____ of _____.

Name of the Notary or Regional Clerk

OAT 1721 Summons (SUMAC)

(Rev. May 2018)

Rules of Civil Procedure 2009, as amended

By: _____

Name and Signature of the Auxilliary Court Clerk

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I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.

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**COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
JUDICIAL CENTER OF SAN JUAN**

ELECTRIC POWER AUTHORITY OF
PUERTO RICO

Plaintiff

vs.

LIBERTY MUTUAL INSURANCE
COMPANY

Respondent

Civil No.:

Chamber:

Regarding: **Collection**

COMPLAINT

TO THE HONORABLE COURT:

The Electric Power Authority of Puerto Rico (the “AEE”, for its initials in Spanish) comes forward, by means of the undersigned legal representation, and very respectfully states, alleges, and requests:

I. Jurisdiction and Competence

1. This Honorable Court has jurisdiction and competence over the above-captioned complaint by virtue of 4 L.P.R.A. §§ 25a and 25c and 32 L.P.R.A. Ap. V, R. 3.1, 3.2 and 3.4.

II. The Parties

2. The AEE is a public corporation and an instrumentality of the Commonwealth of Puerto Rico that is capable of suing and being sued. The physical address for the AEE is P.O. Box 364267, San Juan, P.R. 00936-4267. The telephone number for the AEE is 787-521-3434. The fax number for the AEE is 787-521-4120.

3. Upon knowledge and belief, Liberty Mutual Insurance Company (“Liberty”) is a corporation duly organized under the laws of the State of Massachusetts, U.S., dedicated to the industry of insurance and bonds. The physical and postal address for Liberty is 175 Berkeley Street, Boston, MA 02116, USA. The phone number for Liberty is (617) 357-9500. Liberty is an insurer authorized to conduct business in Puerto Rico with a physical address at 304 Ponce de León Ave., Suite 903, San Juan, P.R. 00918.

III. Allegations of Fact and Complaints

4. The AEE supplied electric power to facilities located in Puerto Rico belonging to Kmart Corporation ¹ (“Kmart”) and Sears Roebuck of Puerto Rico, Inc. ² (“Sears”) under the accounts (the “Pre-bankruptcy Accounts) itemized in paragraph 8 of this complaint.

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5. On October 15, 2018, Sears and Kmart filed bankruptcy under Chapter 11 of the U.S. Bankruptcy Code, 11 U.S.C. §§ 101 et seq., before the Bankruptcy Court of the US for the Southern District of New York (the “Bankruptcy Court”) thus commencing the case In re Sears Holding Corporation, et al., Case No. 18-23537 (RDD).

6. Sears and Kmart owe the AEE the overdue amounts, liquid and demandable, of \$17,174.34 and \$1,485,591.66, respectively, under the Pre-bankruptcy Accounts for electrical power provided by the AEE to Sears and Kmart and related charges up to October 14, 2018, inclusive.

7. Liberty issued the Bond number 285-030-664 (the “Bond”) to solidarily guarantee the payment of the Sears and Kmart debt to the AEE for consumption of electric power.

8. Liberty issued the Bond to solidarily guarantee the payment the payment of debts owed by Sears and Kmart to the AEE under the Pre-bankruptcy Accounts up to the following penalty amounts:

<u>Kmart</u>		
Account No.	Premises	Penalty Amounts
0562141000	Centro Commercial Plaza Gautama	\$44,452.00
1342291000	Plaza Trujillo Alto	\$45,060.00
1456441000	Yauco Plaza II	\$90,000.00
1541941000	Plaza Juana Díaz	\$48,232.00
3396612000	PR 20, Plaza Guaynabo	\$60,352.00
3992612000	Carr. 167 Km 0.6, Bo. Pájaros	\$56,926.00
4377212000	Plaza Río Hondo	\$51,554.00
4644102000	San Patricio Shopping Center	\$63,028.00
5224231000	Carr. 2 Km 149, Mayaguez	\$57,130.00
5326722000	Montehiedra Shopping Center	\$61,894.00
6104102000	Plaza Las Américas	\$77,544.00
6778911000	Carr. 2 Km 127, Aguadilla	\$43,270.00
6817071000	Bo. Montella, Cayey	\$42,798.00
7595451000	Km 257, Ave. Barayama, Ponce	\$60,842.00
7605111000	Plaza del Atlántico, Arecibo	\$28,280.00
7818871000	Las Catalinas Mall, Caguas	\$61,670.00
8048871000	Plaza Centro, Caguas	\$56,404.00
8213621000	Plaza del Oeste, San Germán	\$49,924.00
8939691000	Los Colobos Shopping Center, Carolina	\$65,348.00
5653381000	Carr. 3, Bo. Quebrada, Fajardo	\$16,518.00

¹ A/k/a or d/b/a Kmart Corp. and/or Big Kmart Corporation.

² A/k/a or d/b/a Sears Roebuck Co., Sears Roebuck, Sears P.R., Sears Brand Central, Sears Homelife and/or Sears Warehouse.

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3206802000	Carr. 2, Plaza Caribe Mall, Vega Alta	\$54,872.00
<u>Sears</u>		
Account No.	Premises	Penalty Amount
3983504587	Hato Tejas, Bayamón	\$1,614.00
2215309303	Hato Tejas, Bayamón	\$12,200.00

9. Sears and Kmart owe the AEE the overdue, liquid, and demandable amounts of \$17,174.34 and \$1,485,591.66, respectively for consumption of electric power and related charges up to October 14, 2018.

10. Under the Bond, Liberty owes the AEE the overdue, liquid, and demandable amounts of \$13,814.00 y \$828,916.81 due to debts owed by Sears and Kmart, respectively, to the AEE under the Pre-bankruptcy Accounts up to October 14, 2018, inclusive.

11. On February 14, 2019, Mrs. Marilyn Medina Iguina (Customer Service Senior Supervisor at the AEE) requested that Liberty issue the payment for \$30,935.60 under the Bond. Said complaint corresponded exclusively to account number 3206802000 from Kmart.

12. On March 27, 2019, Liberty sent a letter to AEE indicating that its complaint for \$30,935.60 had been approved. With said letter, Liberty attached a “Release and Assignment” and asked the AEE to return it, signed and notarized, in order to be able to remit the appropriate payment to the AEE.

13. On June 26, 2019, the AEE submitted a complaint to Liberty for the amount of \$842,730.91 under the Bond. Said complaint was accompanied by the corresponding account statements for Kmart and the two (2) Sears accounts mentioned in said letter, which had not been a part of the complaint submitted by the AEE on February 14, 2019.

14. On June 27, 2019, Liberty acknowledged receipt of the complaint submitted by the AEE on June 26, 2019. In its letter, Liberty indicated that, on March 27, 2019, it had approved the complaint of \$30,935.60 submitted by the AEE on February 14, 2019 [which Liberty, to its convenience, failed to indicate that it was exclusively meant for the Kmart account number 3206802000] but indicated that it had not yet received the signed “Release and Assignment” which Liberty had provided on March 27, 2019 when it approved payment of said complaint.

15. The “Release and Assignment” sent by Liberty is a pre-formulated document that constitutes a contract of adherence.

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16. On July 29, 2019, the AEE sent Liberty the “Proof of Complaint Affidavit” and the “Release and Assignment” duly signed, which corresponded to the complaint of \$30,935.60 for Kmart account number 3206802000. Said documents were the same documents Liberty had sent with its letter dated March 27, 2019 approving said \$30,935.60 complaint.

17. Liberty issued a check dated July 23, 2019 in the amount of \$30,935.60, and that included the following comment: “Full and Final Payment, Release and Assignment of All Complaints Against Bond. No. 285030664 Issued on Behalf of Kmart Corporation”.

18. On July 30, 2019, the AEE told Liberty that, contrary to what the comment that Liberty included in the check stated, the amount of \$30,935.60 corresponded exclusively to the amount complained for the Kmart account number 3206802000.

19. Each document submitted to Liberty related to the complaint for \$30,935.60 of the AEE clearly referenced that each complaint applied exclusively to Kmart account number 3206802000.

20. In accordance to what is stated above, the AEE indicated that it could not accept the check that included such a comment by Liberty, unless Liberty would certify in writing that the check was a complete and definitive payment of all complaints against the Bond regarding the Kmart account number 3206802000, and that it was not the complete and definitive payment, nor release or transfer, of complaints filed under other Kmart accounts covered by the Bond.

21. On July 30, 2019, Liberty sent a communication to AEE indicating the following: “[a]ttached please see attached Release and Assignment executed on July 3, 2019, releasing the referenced bond.”

22. That same day, on July 30, 2019, the AEE sent Liberty a communication accompanied by copy of the “Proof of Complaint Affidavit” signed by the AEE on July 3, 2019 and indicated to Liberty that the document clearly established that the \$30,935.60 complaint applied exclusively to Kmart account number 3206802000.

23. On August 19, 2019, Liberty sent a letter to AEE denying the complaint for \$842,730.91 submitted by the AEE on June 26, 2019. Liberty argued that the “Release and Assignment” signed by the AEE on July 3, 2019 for the complaint of \$30,935.60 [which was to be exclusively applied to Kmart account number 3206802000] was a valid release for the entire complaint under the Bond.

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24. After an additional review and a detailed denial by Liberty, on June 3, 2020, the AEE sent Liberty a letter, among other things, indicating that the denial of the complaint by the AEE lacked merit and that Liberty had acted in bad faith, as Liberty was aware that the complaint of \$30,935.60 corresponded only to Kmart account 3206802000 and that the “Release and Assignment” signed by the AEE was only for the complaint corresponding to said account. Therefore, the AEE again demanded that Liberty pay the complained amount of \$842,730.91 in a term of no less than ten (10) days and notified Liberty that, were the AEE to not receive payment, it would proceed to file the appropriate legal complaint.

25. The “Release and Assignment” did not constitute an acceptance of settlement as the AEE did not receive, in exchange for its signature in the same, nothing that the AEE was not already entitled to receive as payment from Liberty; in addition, the payment was not accepted. Therefore, the doctrine of “lack of adequacy of consideration”³ applies.

26. Up to this moment, Liberty has not answered the letter from the AEE dated June 3, 2020 nor has it paid the requested amount of \$842,730.91, causing the AEE to file the current complaint.

27. In accordance with Section 22.050 of the Insurance Code of Puerto Rico, 26 L.P.R.A. § 2205, Liberty had ninety (90) days from the time the AEE submitted its complaint to Liberty, that is to say, until September 24, 2019, to fulfill AEE’s complaints, but Liberty has not done so yet.

28. Liberty has defaulted as it has not paid AEE the requested amount of \$842,730.91 on or before September 24, 2019.

29. Liberty owes the AEE late payment interests on the amount of \$842,730.91, at the annual interest rate 6.5% from September 24, 2019, inclusive.

30. Liberty owes the AEE the interest on the late-payment interests at an annual interest rate of 5.75% from the date the complaint was filed.

31. Liberty incurred in unfair business practices in the adjustment of complaints and has been reckless in not fulfilling AEE’s complaint in a timely fashion and on denying AEE’s complaint on a basis that clearly lacks merits, although the AEE has evidently shown the same to Liberty, thus causing the AEE

³ Liberty clearly acted in bad faith and in violation of the principle stating that “[h]owever general the terms of the contract may be, they should not be understood as including therein things and cases different from those with regard to which the persons interested intended to contract,” 31 L.P.R.A. § 3473, by attempting to extend the release that Liberty sent in relation to a complaint for only one account, to other complaints filed by the AEE under other accounts after Liberty had sent the release but before the AEE signed and sent the same to Liberty along with the “proof of complaint” only for the account for the complaint about which Liberty had notified the release. Evidently, the AEE did not have and never had the intention of releasing Liberty from a complaint of more than \$842,730.91 in exchange for a payment of \$30,935.60 that Liberty was already under obligation to pay the AEE anyway; a payment which, consequently, could not be used as compensation (much less adequate compensation) for the “general” release that Liberty alleges having received.

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32. to incur expenses and perform transactions that would have otherwise been avoidable, including the filing of the case captioned above.

33. The AEE requests that Liberty be forced to pay the AEE the following: (a) the amount of \$842,730.91; (b) the late-payment interests at the annual rate of 6.5% on the sum of \$842,730.91, calculated from September 24, 2019, inclusive; (c) the interests on late-payment interests at an annual rate of 5.75% from the date of filing of this complaint; (d) interests due to recklessness; (e) a reasonable amount for attorney fees due to recklessness, but not less than 10% of the principal amount complained; and (f) litigation costs.

THEREFORE, the AEE respectfully requests that the Honorable Court declare In Favor of the current complaint and, as a consequence, issue judgment against Liberty, obligating it to pay the AEE the following: (a) the amount of \$842,730.91; (b) the late-payment interests at the annual rate of 6.5% on the sum of \$842,730.91, calculated from September 24, 2019, inclusive; (c) the interests on late-payment interests at an annual rate of 5.75% from the date of filing of this complaint; (d) interests due to recklessness; (e) a reasonable amount for attorney fees due to recklessness, but not less than 10% of the principal amount complained; and (f) litigation costs.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico on June 29, 2020.

CORRETJER, L.L.C.
Attorneys for the AEE
625 Ave. Ponce de
León
San Juan, P.R. 00917-
4819 Tel. 787-751-4618
Fax: 787-759-6503

/s/ Eduardo J. Corretjer Reyes
RUA No. 15,985
ejcr@corretjerlaw.com
/s/ Rafael H. Ramírez Polanco
RUA No. 19,605
rhr@corretjerlaw.com



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**COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
JUDICIAL CENTER OF SAN JUAN**

ELECTRICAL POWER AUTHORITY OF
PUERTO RICO

Plaintiff

vs.

LIBERTY MUTUAL INSURANCE
COMPANY

Respondent

Civil No.: **SJ2020CV03378**

Chamber:

Regarding: **Collections**

ADDENDUM TO LEGAL FILE

TO THE HONORABLE COURT:

The Electrical Power Authority (the “AEE”) comes forward, through the undersigned legal representation, and very respectfully expresses, alleges, and requests:

1. Today, June 29, 2020, in the afternoon, the AEE filed the claim that gave rise to the above-captioned case.
2. In accordance with the Administrative Directives for the Electronic Presentation and Notification filed through SUMAC, the AEE accompanies the current motion with the duly completed subpoena form so that the Clerk of the Honorable Court issue the corresponding subpoena and sends us an electronic copy of the same through the system so that we can proceed with its service.

THEREFORE, the AEE respectfully requests that the Honorable Court be made aware of what is herein expressed and that the Clerk of the Honorable Court issue the corresponding subpoena and send us electronic copy of the same through the system so that we can proceed with its service.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico on June 29, 2020.

CORRETJER, L.L.C.
Attorneys for the AEE
625 Ave. Ponce de León
San Juan, P.R. 00917-4819
Tel. 787-751-4618
Fax: 787-759-6503

/f/ Eduardo J. Corretjer Reyes
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Addendum to the Legal File re Issue of Subpoena
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/s/ Rafael H. Ramírez Polanco
RUA No. 19,605
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